

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 7/16/2007	Department ID Number: PD-07-002

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Cullerth Graft*
PENELOPE CULLERTH-GRAFT, DPA, CITY ADMINISTRATOR

PREPARED BY: KENNETH W. SMALL, CHIEF OF POLICE *K. Small*

SUBJECT: Adopt Ordinance Amending Huntington Beach Municipal Code Chapter 9.20 Relating to Public Nudity

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)
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Statement of Issue:

The Police Department is recommending that Huntington Beach Municipal Code Chapter 9.2 relating to public nudity be amended as to Section 9.20.015, which prohibits public nudity.

Funding Source:

No funds required.

Recommended Action: Motion to:

Adopt Ordinance No. 3773, An Ordinance of the City of Huntington Beach Amending Chapter 9.20 Of The City of Huntington Beach Municipal Code Relating To Public Nudity.

Alternative Action(s): Motion to:

Do not adopt Ordinance No. 3773.

G-2A

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 7/16/2007

DEPARTMENT ID NUMBER: PD-07-002

Analysis:

Currently, State law and the City of Huntington Beach Municipal Code do not prohibit public nudity. Although State law does have statutes governing "Indecent Exposure" and "Lewd Conduct", the courts have interpreted these laws to require a sexual gratification element. This means a subject walking naked on a public street, who was not displaying behavior indicating sexual gratification, would not be violating State law or City Ordinance.

Recently, the Police Department had incidents involving a "naturist" living in the downtown area. On several occasions, this subject stood naked in either his front yard, or the threshold of his residence, in full view of the public walking on the sidewalk. Since the subject's behavior did not include an overt element of sexual gratification, the Police Department was able only to take reports from the citizens who complained. These reports were submitted to the Orange County District Attorney's Office, who declined to prosecute the subject, citing the missing sexual gratification element. Instead, the District Attorney's Office suggested the City enact an ordinance prohibiting public nudity.

Strategic Plan Goal:

C-2 Provide quality public services with the highest professional standards to meeting community expectations and needs, assuring that the city is sufficiently staffed and equipped overall.

Environmental Status:

N/A

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Ordinance No. <u>3773</u> An Ordinance of the City of Huntington Beach Amending Chapter 9.20 of the Huntington Beach Municipal Code Relating to Public Nudity.

G-2A. 3

ATTACHMENT #1

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 9.20 OF THE HUNTINGTON BEACH MUNICIPAL
CODE RELATING TO PUBLIC NUDITY

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That new Section 9.20.015 be, and is hereby added to Chapter 9.20 of the Huntington Beach Municipal Code, said section to read as follows:

Section 9.20.015 Public Nudity. It shall be unlawful for any person over the age of nine years old to appear, bath, sunbathe, walk or be on any public park, playground, beach, or in the water adjacent thereto, or on any other public land, or on any private property open to public view from any public beach, playground, park, public place, or public right-of-way in such a manner as to knowingly and intentionally:

- (a) Expose his or her genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region, or expose the nipples and/or areola of the female breast except as necessary while engaging in the breastfeeding of an infant under the age of two years old; or
- (b) Expose any device, costume or covering that gives the appearance of or simulates the male or female genitals, pubic hair, pubic hair region, natal cleft, perineum, anal region, or the nipple and/or areola of the female breast.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

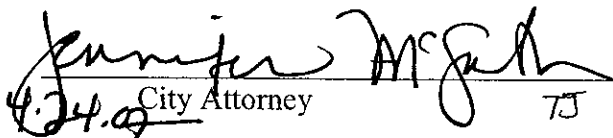
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200_____.

Mayor

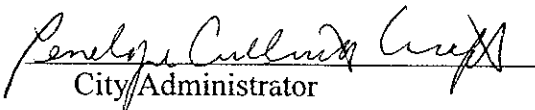
ATTEST:

City Clerk

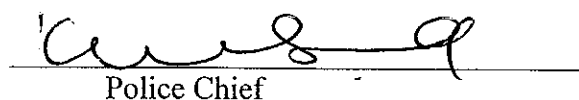
APPROVED AS TO FORM:


City Attorney TS 4/23/07

REVIEWED AND APPROVED:


City Administrator

INITIATED AND APPROVED:


Police Chief

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LEGISLATIVE DRAFT

Chapter 9.20

PROHIBITED PUBLIC CONDUCT

(542-5/49, 1935-11/74, 2992-4/89, Urg. Ord. 3192-4/93, 3215-12/93, 3289-8/95, 3412-3/99)

Sections:

9.20.010 Dressing in public places

9.20.015 Public Nudity

9.20.020 Human waste

9.20.030 Picketing of private residences

9.20.040 Trespassing on school grounds

9.20.050 Nuisance

9.20.010 Dressing in Public Places. No person shall dress or undress for the purpose of putting on or taking off a bathing garment in or upon any public street, alley or other public place, or underneath any pier or wharf in the city, or upon any public beach, or within any public toilet, or within a vehicle other than a house trailer, motorhome or camper designed for living purposes.

(542-5/49, 1935-11/74)

9.20.015 Public Nudity. It shall be unlawful for any person over the age of nine years old to appear, bath, sunbathe, walk or be on any public park, playground, beach, or in the water adjacent thereto, or on any other public land, or on any private property open to public view from any public beach, playground, park, public place, or public right-of-way in such a manner as to knowingly and intentionally:

- (a) Expose his or her genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region, or expose the nipples and/or areola of the female breast except as necessary while engaging in the breastfeeding of an infant under the age of two years old; or
- (b) Expose any device, costume or covering that gives the appearance of or simulates the male or female genitals, pubic hair, pubic hair region, natal cleft, perineum, anal region, or the nipple and/or areola of the female breast.

9.20.020 Human waste. No person shall urinate or evacuate his bowels on private property in an area exposed to the public view, or on any public street, sidewalk, alley, park, or other public place, except in a public restroom. (2992-4/89)

9.20.030 Picketing of private residences. In enacting this section, the City Council finds as follows: (Urg. Ord. 3192-4/93)

- (a) Protecting the well-being, tranquility, and privacy of the homes of residents of the City is a significant governmental interest. (Urg. Ord. 3192-4/93)
- (b) A special benefit of the privacy all residents enjoy within their homes is the ability to avoid intrusions and unwanted speech. (Urg. Ord. 3192-4/93)

- (c) Picketing which targets the dwellings of specific residents of the City is an inherent and offensive intrusion on residential privacy. (Urg. Ord. 3192-4/93)
- (d) Picketing before or about dwellings obstructs and interferes with the free and safe use of public sidewalks and public streets. (Urg. Ord. 3192-4/93)
- (e) The purpose of this section is to protect and preserve the well-being, tranquility and privacy of the home by ensuring the residents of the City are free from picketing directed specifically at them. (Urg. Ord. 3192-4/93)
- (f) This section is enacted for the further purpose of protecting the free and safe use of public sidewalks and streets. (Urg. Ord. 3192-4/93)

It is unlawful for any person to engage in picketing within 300 feet of a residence or dwelling of any individual, where such picketing is focused or targeted against that residence, dwelling or individual. (Urg. Ord. 3192-4/93, 3412-3/99)

Violations of this section shall constitute a misdemeanor punishable by fine or imprisonment, or both. No fine imposed pursuant to this section for any single violation thereof shall exceed Five Hundred dollars (\$500), nor shall imprisonment exceed six (6) months for each violation hereof and each day that any such separate violation continues shall constitute a separate violation. (Urg. Ord. 3192-4/93)

9.20.040 Trespassing on school grounds. No person shall enter posted school grounds without first obtaining permission from the administrative office of the school or school district, except for the following persons: (3215-12/93)

- (a) Students, currently enrolled at that school. (3215-12/93)
- (b) Teachers, staff members and other employees of the school district. (3215-12/93)
- (c) Service providers and vendors doing business with the school, including counselors. (3215-12/93)
- (d) Volunteers approved by the school. (3215-12/93)
- (e) Parents of students currently enrolled. (3215-12/93)
- (f) Law enforcement and other governmental employees and representatives having business at the school. (3215-12/93)
- (g) Attendees at school events that are open to the public, while those events are open and only in the area open for the event. (3215-12/93)
- (h) Attendees at authorized Civic Center Act functions. (3215-12/93)

9.20.050 Nuisance. It shall be deemed a public nuisance for any person to dress or undress for the purpose of putting on or taking off a bathing garment in or upon any public street, alley or other public place, or underneath any pier or wharf in the city, or upon any public beach, or within any public toilet, or within a vehicle other than a house trailer, motorhome or camper. (3289-8/95)

It shall be deemed a public nuisance for any person to urinate or evacuate his bowels on private property in an area exposed to the public view, or on any public street, sidewalk, alley, park or other public place except in a public restroom. (3289-8/95)